IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

RSA.No. 1318 of 2005()

AS.108/2004 of ADDL. DISTRICT COURT, N.PARAVUR
OS.344/1999 of ADDL.SUB COURT,PARAVUR

.....

: APPELLANT/APPELLANT/DEFENDANT:

ERNAKULAM DISTRICT CO-OPERATIVE BANK,
ALUVA BRANCH, ALUVA, REPRESENTED BY ITS
BRANCH MANAGER.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS: RESPONDENTS/PLAINTIFFS:

---

1. SUJATHA, W/O. V.K. BABU,
VALLOORAKATHUTTU, ALUVA KARA, ALUVA VILLAGE,
ALUVA TALUK.

2. SUBI, D/O. BABU,
VALLOORAKATHUTTU, ALUVA KARA, ALUVA VILLAGE,
ALUVA TALUK.

3. SUMESH, S/O. BABU,
VALLOORAKATHUTTU, ALUVA KARA, ALUVA VILLAGE,
ALUVA TALUK.

4. SUNITHA, D/O. BABU,
VALLOORAKATHUTTU, ALUVA KARA, ALUVA VILLAGE,
ALUVA TALUK, REPRESENTED BY MOTHER AND GUARDIAN
SUJATHA, 1ST RESPONDENT/PLAINTIFF (MINOR).

5. BHARATHY, W/O. KUMARAN,
VALLOORAKATHUTTU, ALUVA KARA, ALUVA VILLAGE,
ALUVA TALUK.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN FOR R1 TO R4

THIS REGULAR SECOND APPEAL HAVINGME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.419/2006 IN RSA 1318/2005

13/7/07 DISMISSED SD/- M.SASIDHARAN NAMBIAR
JUDGE

/true copy/

P.S. TO JUDGE

ME UP FOR ADMISSION
ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A. NO. 1318 OF 2005

==========

Dated this the 13th day of July, 2007

JUDGMENT

Defendant in O.S.344/1999 on the file of Additional Sub Court, North Paravoor is the appellant. Plaintiffs are the respondents. Respondents instituted the suit seeking a decree for declaration of title and for a permanent prohibitory injunction contending that plaint schedule property belongs to them under Ext. A2 sale deed and appellant bank has no right to proceed against the property for the amount due from Indira and therefore respondents are entitled to the decree for injunction. Appellant filed a written statement contending that the appellant bank is not aware of the decree in O.S.207/1979 whereunder respondents are claiming title and therefore respondents are not entitled to the decree sought for. It was also contended that the suit is barred under the provisions of Kerala Co-

operative Societies Act. According to the appellant one Sudhakaran had availed a SRTO loan from the appellant bank and Indira was the surety and plaint schedule property was mortgaged to the bank by deposit of title deeds and hence she should not have sold the property and therefore V.K. Babu under whom respondents claim title did not derive any right or title and therefore respondents are not entitled to the decree sought for. Learned Sub Judge on the evidence of Exts.A1 to A5 and Exts.B1 to B5 granted a decree declaring that respondents have title to the plaint schedule property and appellant bank is not entitled to proceed against plaint schedule property for realising the amount due from prior owner Indira. A decree for injunction was granted against the bank restraining them from proceeding against the plaint schedule property for the amount due from Indira. Appellant challenged the decree and judgment before Additional District Court, North Paravoor in A.S.108/2004. Learned Additional District Judge on

reappreciation of evidence confirmed the findings of learned Sub Judge and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for the appellant and learned counsel appearing for respondents were heard.

3. The argument of learned counsel appearing for appellant was that respondents did not produce either the decree or judgment or the pleadings in O.S.207/1979 and without producing them courts below were not justified in holding that the equitable mortgage created in favour of the appellant bank was hit by lis pendence. It was argued that appellant is in possession of the original title deed deposited by previous owner Indira and appellant is prepared to produce it before the court and first appellate court should not have found the case against the appellant for its non-production and in view of the equitable mortgage by deposit of title deed, the property could not be sold under Exts.A1 and the mortgage

was not hit by lis pendence and hence respondents have no title to the property. Learned counsel also argued that the decree sought for by the respondents is a decree to the effect that appellant bank is not entitled to realise the debt due from Indira, the previous owner and hence the suit is barred under the provisions of Section 69 and 100 of the Co-operative Societies Act.

4. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

5. Though the plaint and judgment in O.S.207/1979 were not produced, Ext.A1 sale deed executed by Sub Court, North Paravoor establish that O.S.207/1979 was filed by V.K. Babu seeking a decree for specific performance of an agreement for sale executed on 31.8.1979 whereunder Indira and Narayani had agreed to sell plaint schedule property for the consideration fixed thereunder and decree for specific performance of the agreement for sale was granted on 31.8.1981 which was

challenged before this court in A.S.401/1982 and the appeal was dismissed on 15.2.1990. It was thereafter Ext.A1 sale deed was executed by the court on 16.11.1991. Even according to appellant, the mortgage was created by deposit of title deeds by Indira as a surety for the loan availed by Sudhakaran from appellant Bank on 8-8-1985. O.S.207 of 1979 was filed in 1979 for specific performance of the agreement for sale dated 31-8-1979 and decree for specific performance was passed on 31-8-1981. Hence even if there was an equitable mortgage created by Indira as canvassed by appellant, it was much after the decree directing Indira and Narayani, the respondents in that suit for execution of the sale deed in O.S.207/1979 and when the appeal was pending before this court. In such circumstance, the right created in favour of appellant is clearly hit by the principles of lis pendence. Appellant is therefore not entitled to proceed against the plaint schedule property which was sold through the court under Ext.A1.

Respondents have title to the plaint schedule property under Ext.A1 and A2.

6. Though it was argued by the learned counsel that as the amount due from Indira, a debtor of the society is a debt to the society and it is a dispute coming within the ambit of Co-operative Societies Act, courts below rightly found that suit is not barred, as it is not a dispute coming within the scope of Section 2(i) of the Co-operative Societies Act. As far as respondents are concerned, they are not claiming any right under a member or surety or debtor of the Society. Therefore the suit is not barred as provided under section 100 of the Code of Civil Procedure.

7. As no substantial question of law is involved in the appeal, the appeal is dismissed. It is made clear that dismissal of the appeal will not prevent the appellant bank from realising the debt due from Indira by other means, except by proceeding against the plaint schedule property. Send back the records to the courts below

immediately.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006